

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

VELOCITY MICRO, INC.,

Plaintiff,

v.

Case No. 3:11cv473

J.A.Z. MARKETING, INC.,

and

JOHN HERTENSTEINER

Defendants.

MOTION TO DISMISS “COUNTERCLAIM”

Plaintiff, Velocity Micro, Inc. (“Velocity Micro”), by counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), moves to dismiss the “Counterclaim” of J.A.Z. Marketing, Inc. (“J.A.Z. Marketing”). The reasons in support of the motion are set forth in the accompanying memorandum.

WHEREFORE, Plaintiff, Velocity Micro, Inc., respectfully requests the Court to grant its Motion to Dismiss “Counterclaim,” along with granting it any other and further relief that the Court deems just and proper.

ROSEBORO NOTICE

Pursuant to Local Civil Rule 7(K) and *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), undersigned counsel advises J.A.Z. Marketing of the following:

1. J.A.Z. Marketing is entitled to file a response opposing this motion; any such response must be filed within twenty (20) days of the date on which this Motion to Dismiss was filed;

2. The Court could dismiss the “Counterclaim” on the basis of Velocity Micro’s moving papers if J.A.Z. Marketing does not file a response;

3. J.A.Z. Marketing must identify all facts stated by Velocity Micro with which they disagree and must set forth J.A.Z. Marketing’s version of the facts by offering affidavits (written statements signed before a notary public and under oath) or by filing sworn statements (bearing a certificate that it is signed under penalty of perjury); and

4. J.A.Z. Marketing is also entitled to file a legal brief in opposition to the one filed by Velocity Micro, which has been filed with this Court.

VELOCITY MICRO, INC.

By: /s/ Timothy J. St. George
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. A copy of the foregoing was also sent by U.S. Mail, postage prepaid, to:

John Hertensteiner
121 Lewis Avenue South
Watertown, MN 55388

Pro Se Defendant

Craig M. Mertz, Esq.
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Non-retained counsel for Defendants

/s/ Timothy J. St. George

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